

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA, :

Plaintiff, : Criminal Action No.

v. : 1:16-cr-10094-LTS

ROSS MCLELLAN, :

Defendant. :

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BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

JURY TRIAL
Day 15

Tuesday, June 26, 2018
9:03 a.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

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Official Court Reporter
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P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

Today is June 26th, the case of United States vs. Ross McLellan, criminal action 16-10094 will now appear before this court.

THE COURT: I see all counsel and Mr. McLellan. Maria, go get the jury.

THE DEPUTY CLERK: We're missing one.

THE COURT: So much for their 8:30 plan.

THE DEPUTY CLERK: We just said that.

THE COURT: How long -- why don't you just go double-check and see if they've arrived.

Now that you don't need your paralegals. Just sent them off to slave away in another case and don't let them come listen to the verdict or questions or whatever things the jurors have?

MR. FRANK: They'll be back for that.

THE DEPUTY CLERK: Not yet. He'll give me a knock on the door.

THE COURT: Well, we'll stand in recess. I'll just wait back here. I'm assuming the person will be here shortly and we'll reconvene to bring them in.

1 THE DEPUTY CLERK: All rise, this matter is in
2 recess.

3 (Court in recess at 9:04 a.m.
4 and reconvened at 9:08 a.m.)

5 THE COURT: So one of the jurors, the missing
6 juror, called the jury office to report that she is running
7 late, her train was delayed, or some commuting problem.
8 She'll be here in about 15 minutes. So we'll stand in recess
9 and I'll bring them in when she arrives.

10 The question is simply this. If you're all
11 agreeable, I'll charge Ms. Simeone simply to go into the jury
12 room to say that the missing juror has called the jury office
13 to say that her train was delayed and she'll be here shortly,
14 so they know. If you prefer, I'll bring the jury in and I'll
15 tell them what I told you, all in the courtroom. I'm
16 relatively agnostic, if either of you has a preference.

17 MR. WEINBERG: I leave it up to Your Honor's
18 discretion.

19 MR. FRANK: Same, Your Honor.

20 THE COURT: All right. So Ms. Simeone, go into the
21 jury room, and simply explain to them that the missing juror
22 has called the jury office to relay the message that her
23 train was delayed in some fashion and she expects to be here
24 in approximately 15 to 20 minutes and so -- and that's it,
25 just so they know.

1 THE DEPUTY CLERK: Okay.

2 MR. WEINBERG: Does Your Honor think that they
3 should -- there should be some communication that they should
4 defer deliberation until the remaining juror arrives?

5 THE COURT: I'm happy to bring them in to tell them
6 that, but I think that I was very clear in the instructions
7 that they're not allowed to deliberate without everybody and
8 that one of the foreperson's role -- one of the person's
9 roles is to -- responsibility is to make sure that happens.
10 If you want me to bring them in to say that to them, I'm
11 happy to do that, but I don't think it's necessary, given the
12 instructions.

13 THE DEPUTY CLERK: They said thank you for letting
14 them know.

15 THE COURT: Okay. All right. So we'll stand in
16 recess. Ms. Simeone has your numbers. I figure, if nothing
17 else, come back in, say, 20 minutes, and by then this juror
18 should be here and I'll bring them all in just to be sure
19 they've been complying with all the instructions.

20 THE DEPUTY CLERK: This matter is in recess.

21 (Court in recess at 9:10 a.m.

22 and reconvened at 9:26 a.m.)

23 THE DEPUTY CLERK: The McLellan matter is back in
24 session.

25 THE COURT: You can be seated.

1 Maria, go get the jury.

2 MR. WEINBERG: Trying to catch up on the Supreme
3 Court opinions. This is the Fourth Amendment case --

4 THE COURT: Oh, about the cell sites?

5 MR. WEINBERG: Yeah. Four dissenting opinions,
6 over 100 pages, interesting.

7 THE DEPUTY CLERK: All rise for the jury.

8 (The jury enters the courtroom.)

9 THE COURT: Good morning, ladies and gentlemen. So
10 nobody discussed the case outside the jury room with anyone
11 or did any independent research, or otherwise followed all my
12 instructions about only discussing the case when you're all
13 present in the jury room?

14 Good. All right. So I'll send you back to
15 continue your deliberations and thank you. All rise for the
16 jury.

17 (The jury exits the courtroom.)

18 THE COURT: So just so you're not surprised,
19 there's a couple pending motions on the docket that I've
20 ruled on all the issues, but the docket still shows them as
21 pending, so you'll probably see an electronic order today
22 resolving some of those things, just essentially saying in
23 one form or another, given what I said in the courtroom,
24 you're --

25 Well, it's impressive you're reading all the

1 Supreme Court decisions. I have to catch up on all my cases
2 before I get to read anything the Supreme Court has written
3 in the last few days. That's what happens when you get to
4 have five law clerks.

5 Anything else before we adjourn?

6 MR. WEINBERG: Thank you, Judge.

7 THE COURT: Okay. See you later.

8 THE DEPUTY CLERK: This matter is in recess.

9 (Court in recess at 9:29 a.m.
10 and reconvened at 12:31 p.m.)

11 MR. WEINBERG: Mr. McLellan is within minutes. I
12 got him on the cell phone.

13 THE COURT: I'll wait. Can I tell you what the
14 issue is?

15 MR. WEINBERG: Sure.

16 THE COURT: It's a minor issue.

17 So the jurors asked the CSO if they could go
18 outside. I don't think they -- it's my understanding is they
19 want a break to go walk around or -- I don't know for what
20 purpose or why, other than that's what they would like. I do
21 not understand it as a request that they wish to resume
22 deliberations on the courthouse lawn and I understand it
23 as -- from Ms. Simeone, that they simply want to go -- I have
24 no idea if they just want to go for the walk, because it's a
25 nice day or they want to look at their phones or what.

1 So I thought since it's not common practice that
2 this arises, to say the least -- I have not let them go or I
3 have not responded. I wanted to -- I have a thought, which
4 I'll tell you, but I would like to know what your views are.
5 The thought would be, if you're both agreeable, I'm willing
6 to let them go, but I would bring them in here first to
7 explain to them that if they go out, whether they wanted to
8 go buy their own food or they want to go for a walk, or
9 whatever, there's no discussing the case among themselves,
10 either all 12 of them, or any subset. That there's no
11 conducting any independent research, there's no talking about
12 the case at all when they're outside the jury room. And if
13 they want -- but they're in charge of their schedule and if
14 they want to go out, they can do that. And then when they
15 come back, when they're all back, they can resume
16 deliberations when they're all there.

17 I wouldn't -- unless -- I would be willing to bring
18 them back in when they're all together, but that seems
19 unnecessary. But I wanted to see what you all -- so that
20 would be my thought if we let them go, subject to any
21 suggestions or objections that you have, but I didn't want to
22 do any of that without hearing from any of you, both of you.

23 MR. FRANK: Your Honor, the only slight concern
24 that I would have is counsel and, more importantly, the
25 defendant are sort of out and about around the courthouse.

1 And nothing wrong with that, but if the jurors are out and
2 about around the courthouse, there is some potential for
3 people to run into each other and that would potentially be
4 problematic, even if only from an appearance standpoint.

5 THE COURT: So Mr. McLellan, let me catch you up to
6 speed.

7 MR. MCLELLAN: I'm sorry, Your Honor.

8 THE COURT: That's quite all right. The jurors
9 inquired, through the CSO, to Ms. Simeone, whether they could
10 take a break and go out for a few minutes. And I was
11 explaining to the lawyers that that's somewhat unusual. I
12 have not ever had that request before, that I can recall.
13 That I might be prepared to do it. If I did, I'd bring them
14 all in and explain no discussing the case outside the jury
15 room, period, whether they're all 12 or whether there's two
16 of them or any number in between. That, subject to that, and
17 no doing independent research, obviously, that they could
18 walk around the -- and then when they got back, they could
19 resume deliberations, once all 12 of them were back.

20 Mr. Frank raised -- not so much an objection, but a
21 concern, which is that he points out that you and your
22 lawyers -- and in fairness, it may be the agent, I don't
23 know, where he's spending his time, or I imagine there's no
24 other witnesses from the case who are still here. But
25 certainly, the six of you have all been here every day.

1 They recognize, I'm sure all of you, and you are
2 all conceivably, even if you back up in the US Attorney's
3 office, you could be wondering around. And he points out
4 that there could be an appearance issue, if they bump into
5 any one of the six of you, really and that is an issue. I
6 thought about that a little bit.

7 I have two thoughts about that, though I'm curious,
8 and respect whatever -- any positions you both take. One is
9 that, to some extent, we have that risk at the beginning and
10 end of every day. In other words, they're coming in and out,
11 all of you are coming in and out of the building, you know,
12 maybe at the same times, maybe at different times, so there's
13 a certain amount of risk in any trial, and especially a
14 longer one, of the chance of bumping into Mr. McLellan,
15 defense counsel, some of you, not so much any more a witness,
16 but could have been, or the agent. So there is some
17 appearance issue. So I think with the instructions, we could
18 ameliorate that.

19 The second is we could -- I could -- you could all
20 decide to stay inside the building until they return and then
21 I can let them go if you wanted, if that's a concern.

22 MR. FRANK: I think that's a good solution. We
23 could sequester ourselves for however long they are out.

24 MR. WEINBERG: I would have the alternative. If
25 Mr. Frank wants to go outside, he's welcome to go outside,

1 we're all adults, we know how to behave, there's been no
2 contact with jurors, and there'd been no more likely contact
3 with jurors than at 7:30 or 8 o'clock in the morning.

4 You know, Mr. McLellan has been a responsible
5 defendant --

6 THE COURT: I got -- I have no issues with how --
7 nobody has brought anything to my attention that suggests
8 that Mr. McLellan or anyone else in this case has --

9 MR. WEINBERG: He's got four young children, he's
10 not surrounded himself with them and they're not outside the
11 courtroom, and I think Mr. Frank can rest assured that Mr.
12 McLellan will continue to present himself like a responsible
13 adult.

14 THE COURT: So what's the bottom line?

15 MR. WEINBERG: I think it's totally within Your
16 Honor's discretion. I have absolutely no objection. I might
17 add that the jurors should, you know, agree on a time, at
18 their discretion, when to come back.

19 THE COURT: Agree on a time. They mentioned,
20 apparently, to Ms. Simeone, 15 minutes.

21 MR. FRANK: To be clear, Your Honor, I'm not
22 suggesting anything improper --

23 THE COURT: I understand.

24 MR. FRANK: -- by anyone, but there is an
25 appearance issue. And frankly, a juror could see something,

1 even if it's entirely proper, and draw some conclusion from
2 it one way or the other, and it's just best avoided.

3 MR. WEINBERG: Did they say 15 minutes?

4 THE COURT: Yeah, I don't think they're going for
5 two hours.

6 MR. WEINBERG: Oh, if it's a short period, I have
7 no problems.

8 THE COURT: I think what I will just suggest is all
9 of you stay within the building for a period.

10 Maria, why don't you bring them in, and I'll
11 explain.

12 (Discussion off the record.)

13 THE COURT: Do either of you object to me telling
14 them that going out in the middle of the day is not common or
15 typical?

16 MR. WEINBERG: No objection.

17 MR. FRANK: No objection, Your Honor. If they
18 start asking for birthday cakes like that other jury, then we
19 have --

20 THE COURT: Yeah, no.

21 (The jury enters the courtroom.)

22 THE COURT: Please be seated. So I understand from
23 Ms. Simeone that you all want to take a break for something
24 like 15 minutes, go outside, do whatever. That's correct.
25 Okay. So let me just explain why I didn't just respond to

1 Ms. Simeone to what probably to you seems like a perfectly
2 ordinary request. Which is it's just unusual in a sense that
3 no one has ever asked me that before and so I wanted to just
4 consult with the lawyers before I responded. That's why I
5 took a few minutes to gather everybody and the like.

6 So the short answer is, yes, you can do that.
7 Okay. Not a problem. Just a couple things to remember.
8 One, you're not allowed to deliberate outside the jury room.
9 So the only deliberations happen in the jury room, which
10 means even if all 12 of you are together, you're not allowed
11 to deliberate on the courthouse lawn. It's a beautiful spot,
12 I understand it's a beautiful day. There's no deliberations
13 outside. The only deliberations can occur in the jury room,
14 when the door is shut, and when you're all there. That's
15 number one.

16 Number 2, you can't discuss the case when you're
17 outside of the jury room. So you can't discuss the case even
18 if it's all 12 of you in the elevator. You can't discuss the
19 case among yourselves if there's two of you or three of you
20 or seven of you, no discussion about the case outside the
21 jury room. And obviously, no independent research.

22 So it's really the same rules that would apply at
23 the end of the day, like at the end of yesterday and before
24 you came in today, but I just remind you a little bit more,
25 because it's not like elementary school where maybe the

1 teacher will move class outside, you don't get to go outside
2 to deliberate. The only deliberations happen in here.

3 The last thing I just ask is that some -- you
4 decide, but some defined amount of time, so you're all
5 roughly back at the same time, and that you -- and a reminder
6 that no deliberations back in the jury room until everybody
7 has returned, to the extent you all go together.

8 All right. So I'm -- understood from Ms. Simeone
9 that what you wanted was something like 15 minutes. So I'll
10 figure that -- I'll assume it's something -- it's 15, it
11 might spill into 20 or 25, but it wouldn't be much more than
12 that. Is that fair? Okay.

13 Yes?

14 THE JUROR: Do we need to come back in here?

15 THE COURT: No, you do not need to come back to see
16 me. You can go right back -- go directly back to the jury
17 room. And when -- that's why I just remind you, when you're
18 all there, then you can resume, when all 12 of you are there,
19 but, no. You don't need to come back to see me. Okay.

20 All rise -- I should tell you once you're here,
21 unless I hear from you, then at 5 o'clock, I'll bring you in
22 and I'll send you home for the day at 5:00, unless you tell
23 me that you wanted to leave earlier, like you did yesterday
24 or you wanted to stay later. You're ultimately in charge of
25 the schedule, but that will be -- that's when you'll hear

1 from me.

2 Okay. All rise for the jury. Thank you.

3 (The jury exits the courtroom.)

4 THE COURT: All right. So I think the simplest,
5 practical solution, just to avoid -- like there are enough
6 potential issues in this case already, is if we all -- if you
7 figure it's 17 minutes to 1:00, if between now and 1:15,
8 you're in the building, you won't run into them, they're
9 going down the back elevators, they'll be going out the front
10 or the back. If you're between the 2nd floor and up, you
11 won't run into them. Stay between the second floor and up
12 and then we won't have to find out that somebody ran into
13 somebody and then spend time finding out that probably it was
14 nothing, but maybe it was whatever. We don't have to look
15 into it and it will make all of our lives easier.

16 Sounds good?

17 MR. WEINBERG: Sounds good.

18 THE COURT: All right. And I will abide by the
19 same.

20 MR. WEINBERG: 1:15 is okay for us to --

21 THE COURT: Go back outside at 1:15. It will still
22 be sunny then, I promise.

23 MR. WEINBERG: Thanks, Judge.

24 THE DEPUTY CLERK: This matter is in recess.

25 (Court in recess at 12:45 p.m.)

1 and reconvened at 2:10 p.m.)

2 THE DEPUTY CLERK: All rise. The McLellan matter
3 is back in session.

4 THE COURT: All right. So I understand from
5 Ms. Simeone that the CSO reports that they have a verdict.

6 Maria.

7 (The jury enters the courtroom.)

8 THE COURT: I understand you have a verdict.

9 THE JUROR: Yes.

10 THE COURT: All right. Ms. Simeone.

11 It all appears in order. You can publish it.

12 THE DEPUTY CLERK: Mr. Foreperson, please listen to
13 your verdict as it is read into the Court. In the case of
14 the United States vs. Ross McLellan, criminal action
15 16-10094, the verdict is as follows:

16 We, the jury, being unanimous, have reached the
17 following verdicts. Count 1, conspiracy to commit offenses
18 against the United States, violation of Title 18 United
19 States Code, Section 371, guilty.

20 Count 2, securities fraud, violation of Title 15,
21 United States Code, Section 78j, guilty.

22 Count 3, guilty.

23 Count 4, wire fraud, guilty.

24 Count 5, wire fraud, guilty.

25 Count 6, wire fraud affecting a financial

1 institution, not guilty.

2 I certify that the above are the unanimous answers
3 of the jury.

4 Mr. Foreperson, do you agree with the verdict as it
5 is read?

6 THE JUROR: Yes.

7 THE COURT: Either of you wish me to poll the jury?

8 MR. WEINBERG: Yes, Your Honor.

9 THE COURT: All right.

10 THE DEPUTY CLERK: Members of the jury, when your
11 number is called, please answer yes or no as to whether or
12 not you agree with the verdict as it was read. Juror Number
13 1?

14 THE JUROR: Yes.

15 THE DEPUTY CLERK: Juror Number 2?

16 THE JUROR: Yes.

17 THE DEPUTY CLERK: Three?

18 THE JUROR: Yes.

19 THE DEPUTY CLERK: Four?

20 THE JUROR: Yes.

21 THE DEPUTY CLERK: Five?

22 THE JUROR: Yes.

23 THE DEPUTY CLERK: Six?

24 THE JUROR: Yes.

25 THE JUROR: Yes.

1 THE JUROR: Yes.

2 THE DEPUTY CLERK: Nine?

3 THE JUROR: Yes.

4 THE JUROR: Yes.

5 THE DEPUTY CLERK: 11?

6 THE JUROR: Yes.

7 THE DEPUTY CLERK: 12?

8 THE JUROR: Yes.

9 THE DEPUTY CLERK: The jury has been polled.

10 THE COURT: All right. Anything else, either
11 counsel, before I discharge the jury?

12 MR. FRANK: No, Your Honor. Thank you.

13 MR. WEINBERG: No, Your Honor.

14 THE COURT: All right. So ladies and gentlemen,
15 thank you very much for your service. You are discharged
16 from your jury service. That means you are free to go. I
17 asked, though, though you are not required to, because your
18 service has concluded, that you -- when you return to the
19 jury room to gather your things that you wait for me. I'd
20 like to personally thank each of you. It's my practice in
21 every trial, to go back and personally thank each of the
22 jurors. I appreciate the service that you've rendered.

23 I'll be back in just a moment. It will only take
24 me a minute or two before I am back and so I would ask that
25 you indulge me and just wait that amount of time, so I can do

1 that.

2 And although you're done with your jury service, as
3 one last sign of respect of the service that you've given, we
4 all rise for the jury.

5 (Jury exits the courtroom.)

6 THE COURT: All right. We need a date --

7 Well, first of all, any reason to change the
8 conditions.

9 MR. FRANK: No, Your Honor.

10 THE COURT: All right. So McLellan, you remain
11 under the -- you are under conditions of release pending
12 trial. Those same conditions continue to apply until the
13 sentencing or until such change, so all of that applied
14 before you walked in here, same when you walk out.

15 Do you understand that?

16 MR. MCLELLAN: Yes, sir.

17 THE COURT: Okay. I need a date for sentencing,
18 which since I don't have Ms. Simeone, will take me a moment.

19 So it's normally 12 weeks, which would be
20 approximately September 26th, which, for various scheduling
21 reasons, would put it more like the beginning of October.

22 How about the -- Maria, 12 weeks would be the 26th
23 of September? Is that what we're setting them out
24 ordinarily?

25 THE DEPUTY CLERK: Yes.

1 THE COURT: So how about the 10th?

2 THE DEPUTY CLERK: About September 17th.

3 THE COURT: I'm not here. So how about
4 October 10th.

5 MR. WEINBERG: That's fine.

6 THE COURT: All right. Is that fine for you, Mr.
7 Frank and Mr. Johnston?

8 MR. FRANK: I may be in trial then, but that's
9 fine, Your Honor. I'll figure it out.

10 THE COURT: All right. We'll say -- hold on. Let
11 me just --

12 THE DEPUTY CLERK: Did you say October 10th?

13 THE COURT: Yes. 3 o'clock on October 10th. All
14 right.

15 Is there anything else?

16 MR. FRANK: Not for the Government, Your Honor.

17 MR. WEINBERG: Not for the defense, Your Honor.

18 THE COURT: Okay. All right. We're adjourned.
19 Thank you.

20 THE DEPUTY CLERK: All rise, this matter is
21 adjourned.

22 (Court in recess at 2:17 p.m.)
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 8th day of July, 2018.

/s/ RACHEL M. LOPEZ

Rachel M. Lopez, CRR
Official Court Reporter